Filed 12/14/09 In re F.S. CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re F.S., a Person Coming Under the Juvenile Court Law.	B214471
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. T.S., Defendant and Appellant.	(Los Angeles County Super. Ct. No. CK75807)

APPEAL from a judgment of the Superior Court of Los Angeles County. Sherri Sobel, Referee. Affirmed.

Mary E. Cochran, by appointment of the Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, William D. Thetford, Deputy County Counsel, for Plaintiff and Respondent.

T.S. (mother) appeals from the juvenile court's jurisdictional and dispositional orders asserting jurisdiction over F.S. and removing her from mother's custody. Mother contends: (1) she was denied due process because the court failed to give the advisement of rights required by California Rules of Court, rule 5.682(b); (2) there was insufficient evidence to support the finding of jurisdiction under Welfare and Institutions Code section 300, subdivision (b)[1]; and (3) substantial evidence did not support the court's dispositional order removing F.S. from mother's custody. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Background and Detention

F.S. first came to the attention of the Department of Children and Family Services (DCFS) in late December 2008, when she was two months old. DCFS received a referral alleging F.S. was a victim of general neglect. At the time, mother and F.S. were living at Maternity House, a residential drug and alcohol treatment program. Mother had been at Maternity House since June 2008. Prior to F.S.'s birth, child protective services in Texas removed two other children from mother's custody. One child, born in 2004, (J.S.) was removed from mother's custody due to neglect, mother's substance abuse, and her mental health issues. Mother used drugs during her pregnancy, and J.S. tested positive for cocaine when he was born. Although mother was allowed to take J.S. home, he quickly failed to thrive. Mother was unable to properly feed him and did not seem to grasp the importance of regular and frequent feedings. Mother subsequently relinquished custody of J.S.; he was later adopted. Mother's second child, born in 2007, was also removed from mother's custody due to her drug use, mental health issues, and allegations of neglect.[2]

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[1] All further statutory references are to the Welfare and Institutions Code unless otherwise noted. All references to rules are to the California Rules of Court.

[2] The second child died of Sudden Infant Death Syndrome while in foster care.

Mother had a long history of cocaine and marijuana use, and admitted using cocaine and alcohol during the first four months of her pregnancy with F.S. When meeting with DCFS in late December 2008, mother claimed to not exactly recall what happened in Texas with child protective services and her two other children. DCFS asked mother about information it had received that she had suffered a serious brain injury in the past and had been diagnosed as a schizophrenic. Mother acknowledged suffering a brain injury, but said she did not know of a psychiatric diagnosis, and could neither estimate when she last used medication nor state what medications she had used in the past. Mother acknowledged having memory problems, but asserted they would not prevent her from caring for F.S.

Although mother used cocaine during the first months of her pregnancy, she passed 18 random drug tests after entering Maternity House in June 2008. However, her expected date of completion in the program was beginning of January 2009, and she did not have a plan to be able to care for F.S., except to move in with Mr. H., a friend. DCFS noted that mother was living with Mr. H. in 2004 and relying on his assistance when she was found unable to properly care for J.S., her first child. During an interview with DCFS, mother declared she would leave Maternity House without completing the program if DCFS took F.S. away. Despite encouragement from DCFS and the director of Maternity House to complete the program, mother left the facility after F.S. was detained.

The DCFS petition, filed on January 2, 2009, contained two counts under section 300, subdivision (b):

> "[(1)] The child [F.S.'s] mother, [T.S.], has a five year history of substance abuse including the abuse of cocaine and alcohol, which renders the mother incapable of providing the child with regular care and supervision. The mother abused illicit drugs during her pregnancy with the child. On 6/2008, the mother had a positive toxicology screen for cocaine. The mother has failed in her attempt to complete a substance abuse rehabilitation program. The mother has a criminal history of convictions for possession for marijuana for sale and under the influence of a controlled substance. The mother's abuse of illicit drugs and alcohol endangers the child's physical and emotional health and safety, creates a

detrimental home environment and places the child at risk of physical harm, damage and danger.

"[(2)] The child [F.S.'s] mother, [T.S.], has mental and emotional problems, including a diagnosis of BI Polar Disorder and schizophrenia, which renders the mother incapable of providing the child with regular care and supervision. The mother has failed to take her psychotropic medication as prescribed. The mental and emotional condition on the part of the mother endangers the child's physical and emotional health and safety, creates an unsafe home environment and places the child at risk of physical harm, damage and danger."[3]

Jurisdiction/Disposition Report and Hearing Report

On January 26, 2009, DCFS filed a jurisdiction/disposition report. According to personnel from two programs that provided services to mother, mother had anger management issues, a possible learning disability, and memory problems. On more than one occasion, the personnel had engaged in detailed conversations with mother, only to have her ask questions some time later as if the conversations had never taken place. On at least one occasion, mother grew angry when a social worker called to talk about her ability to care for F.S., and she remained angry for hours. Mother talked about leaving the country or relinquishing F.S. because the situation was too stressful.

Hospital records from F.S.'s birth revealed that the pregnancy was complicated due to mother's cocaine and drug use during the first four months of the pregnancy, and her cigarette use—a half-pack each day—throughout the entire pregnancy. Mother attended only one prenatal medical care appointment before F.S. was born. A social worker from the facility that gave mother her prenatal care observed mother had issues with maintaining proper hygiene, and that she did not seem interested in F.S. The Maternity House director reported mother had to be trained to care for F.S., but she picked up the training quickly, and, with supervision, was doing fine with tasks such as holding F.S. and changing her diaper.

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[3] The trial court eventually struck one line from the first count referring to mother's June 2008 positive drug test.

Mother also revealed that she had taken an anti-psychotic medication in the past, but was no longer taking any medication.

By the time of the report, mother had had two visits with F.S., but was nearly an hour late to each visit. DCFS commended mother for having done well at the Maternity House program, but noted: "However, the mother does have a ten year history of cocaine use. Although she reported that she completed prior [drug treatment] programs, she was not able to provide proof or dates of her completion. Further, mother relapsed and has only been sober for seven months. Out of those seven months, six of them were in residential care where she could be monitored and protected from the normal outside environment. Based on this information, DCFS believes that the mother is not ready to assume full care of her child."

Jurisdiction and Disposition Hearing

At the January 2, 2009 detention hearing, mother, through her counsel, waived reading of the DCFS petition and entered a denial. On January 26, 2009, the court set a date for a contested jurisdiction hearing. Mother's counsel gave an estimate for length of the hearing, and indicated she was composing a list of DCFS employees she would need to be available. The court ordered the parties to exchange witness lists.

At a February 6, 2009 hearing, the court noted the case was set for a two-hour contested hearing, but continued the matter so that a psychological evaluation of mother could be conducted and a subpoena issued on mother's behalf. Mother's counsel confirmed the estimated length of the hearing, and requested that the DCFS social worker be ordered in for the hearing.

On March 2, 2009, the parties convened for the contested jurisdiction hearing. The court began the proceedings and asked, "Mother has this set for a two-hour contest. Is it going?" Mother's counsel responded: "It is going forward, Your Honor; however, I would like to go by argument only unless somebody else would like to call a witness." Mother's counsel argued the court should dismiss the petition, or alternatively that the court should at least release F.S. to mother on the condition that she remain in a live-in program for mothers and children.

The juvenile court found F.S. was a child described by section 300 and sustained both counts of the petition. The court further found by clear and convincing evidence that returning F.S. to mother would create a substantial risk of danger to F.S.'s physical or emotional well-being. The court concluded there were no reasonable means to protect F.S. without removing her from mother's physical custody. The court ordered DCFS to provide mother reunification services.

This appeal followed.

DISCUSSION

I. The Juvenile Court's Failure to Advise Mother Under Rule 5.682(b) Was Harmless

Mother contends the juvenile court denied her due process by failing to advise her of her rights as required under rule 5.682(b). We conclude the error was harmless.

A. Rule 5.682(b)

Rule 5.682 sets forth various procedures the juvenile court is to follow at the commencement of a jurisdiction hearing. Under subdivision (b), "the court must advise the parent or guardian of the following rights: [¶] (1) The right to a hearing by the court on the issues raised by the petition; [¶] (2) The right to assert any privilege against self-incrimination; [¶] (3) The right to confront and to cross-examine all witnesses called to testify; [¶] (4) The right to use the process of the court to compel attendance of witnesses on behalf of the parent or guardian; and [¶] (5) The right, if the child has been removed, to have the child returned to the parent or guardian within two working days after a finding by the court that the child does not come within the jurisdiction of the juvenile court under section 300, unless the parent or guardian and the child welfare agency agree that the child will be released on a later date." After giving this advisement, the juvenile court is to inquire whether the parent intends to admit or deny the allegations of the petition. (Rule 5.682(c).)

In re Monique T. (1992) 2 Cal.App.4th 1372 (*Monique T.*), considered the legal effect of a juvenile court's failure to give the required advisements. In *Monique T.*, the mother submitted the matter for a jurisdictional determination based on the petition and

detention report. (*Id.* at p. 1375.) Through counsel, the mother waived reading of the petition and the court did not advise her of the rights she would be giving up upon submission. The Court of Appeal concluded it was error for the court not to explain mother's rights to her as required by then rule 1449, and further the juvenile court erred in not obtaining mother's personal waiver of her due process rights. However, the reviewing court determined the error was harmless beyond a reasonable doubt. (*Id.* at p. 1377.) The mother was represented by counsel at all times and she was under no pressure to waive her rights. Counsel had explained mother's rights to her. (*Id.* at p. 1378.) In addition, the evidence of the mother's inability to care for her child was uncontradicted, and she did not indicate that she could have offered different or more favorable witnesses or evidence had she proceeded with a hearing. (*Ibid.*)

We similarly conclude here the juvenile court's failure to advise mother of her rights as required by rule 5.682(b) was harmless. Unlike the mother in *Monique T.*, T.S. did not waive her right to a contested hearing by submitting on the petition. Instead, mother's counsel asked for a hearing and re-affirmed on multiple occasions that mother would contest jurisdiction. It also appears that mother exercised—or took steps to exercise—her right under rule 5.682(b)(4) to subpoena a witness. The record before us does not indicate why mother presented only counsel's arguments instead of calling witnesses at the hearing, or offering other evidence. Yet, mother asked for and received a hearing on the issues raised by the petition, as she had a right to under rule 5.682(b).

Moreover, mother does not deny the relevant facts contained in the evidence presented to the juvenile court. She admitted she had a history of drug use, used drugs and alcohol during the first months of her pregnancy with F.S., and had two other children removed from her custody due to neglect. She also acknowledged having memory problems and that she suffered a past brain injury. Mother has not indicated what may have been different had she been properly advised under rule 5.682(b). She asserts she had favorable evidence to present regarding her participation in residential rehabilitation programs. But this evidence was included in the DCFS jurisdiction report, and mother's counsel referenced these facts in her arguments at the jurisdiction hearing.

Mother does not claim she had favorable witnesses to offer or other evidence that was not presented to the juvenile court. Mother was also represented by counsel at all proceedings.

Any juvenile court error in failing to advise mother of her rights at the jurisdiction hearing as required by rule 5.682(b) was harmless.[4]

II. Substantial Evidence Supported the Jurisdictional and Dispositional Orders

A. Jurisdiction Under Section 300, subdivision (b)

Mother contends there was insufficient evidence to support the juvenile court's assertion of jurisdiction under section 300, subdivision (b). We disagree.

"On appeal from an order making jurisdictional findings, we must uphold the court's findings unless, after reviewing the entire record and resolving all conflicts in favor of the respondent and drawing all reasonable inferences in support of the judgment, we determine there is no substantial evidence to support the findings. [Citation.] Substantial evidence is evidence that is reasonable, credible, and of solid value. [Citation.]" (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185.)

Under section 300, subdivision (b), the court may assert jurisdiction if "the child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child . . . or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical

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[4] On appeal, mother suggests she submitted the matter for a jurisdictional determination based on the information provided to the court. (See rule 5.682(e).) The record demonstrates otherwise, but even if we deemed mother to have submitted the jurisdictional determination to the court and waived further hearing, we would still conclude the court's failure to provide the rule 5.682 advisements was harmless, for the reasons described above.

Mother's opening brief also refers to rule 5.682(f), but does not include any argument or discussion related to that subdivision. We do not consider points raised on appeal that are not supported by argument or citations to relevant legal authority. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.)

treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse." "A jurisdictional finding under section 300, subdivision (b) requires: ' "(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) 'serious physical harm or illness' to the minor, or a 'substantial risk' of such harm or illness." [Citation.]' [Citations.]" (*In re James R.* (2009) 176 Cal.App.4th 129, 135.)

There was sufficient evidence that F.S. faced substantial risk of suffering serious physical harm or illness if left unsupervised in mother's care. Mother had already been unable to care for two other infants, and the second child was removed from her custody less than two years before F.S. was born.[5] (*In re Y.G.* (2009) 175 Cal.App.4th 109, 115-116 [parent's abuse of even an unrelated child may be evidence that parent's own child is at substantial risk of abuse under section 300, subdivision b]; § 355.1, subd. (b) [proof that parent neglected another child is admissible].) Mother had been using cocaine for 10 years, beginning when she was 25. She used cocaine and alcohol during the first four months of her pregnancy with F.S., smoked cigarettes throughout the pregnancy, and had only one prenatal medical appointment before F.S. was born. (*In re Troy D.* (1989) 215 Cal.App.3d 889, 899-900 (*Troy D.*).)

To mother's credit, she enrolled in a residential drug treatment program in June 2008—four months before F.S. was born—and submitted numerous negative random drug tests over the next six months. However, mother also admitted that she had completed other drug treatment programs in the past, and had apparently relapsed. In addition, mother failed to complete the Maternity House program. Mother also had unresolved and untreated mental issues. Mother was previously diagnosed as schizophrenic, and she admitted to suffering from depression. But, mother was not receiving treatment for either condition, despite the fact that these issues were a factor in the removal of her two other children from her custody.

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[5] The second child was born in February 2007. The record does not indicate when that child was removed by Texas child protective services. F.S. was born in October 2008.

Mother further suffered from a learning disability or other problem that caused her to have memory problems. She contends on appeal there was no updated information regarding her mental or emotional condition. While it is true that results of a court-ordered psychiatric evaluation were not available at the jurisdiction and disposition hearing, there was evidence that psychiatric or developmental problems continued to significantly affect mother. For example, mother was at times unable to recall meeting people, or even conversations about her rights.[6]

In addition, specific evidence of mother's past conduct in regard to F.S. supported the juvenile court's findings. As described above, mother used cocaine while pregnant with F.S., which was probative of future child neglect.[7] (*Troy D., supra,* 215 Cal.App.3d at pp. 899-900 [noting prenatal use of drugs by mother is probative of future child neglect; collecting cases in which mother's drug use during pregnancy was one factor constituting neglect]; *In re Stephen W.* (1990) 221 Cal.App.3d 629, 638 [accord]; *Monique T., supra,* 2 Cal.App.4th at p. 1379.) A social worker noted that mother did not seem interested in F.S., and expressed concerns about mother's ability and motivation to care for the baby. When DCFS intervened, mother left Maternity House, even though she was only days away from completing the program. During an earlier consultation with service providers in which personnel told mother their concerns about her ability to care for F.S. without supervision, mother suggested she might leave the country or relinquish custody of F.S. because the situation was too stressful.

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6 One individual who had worked to help mother reported: " '[Mother] would call me with help understanding something, such as her rights to leave the program she was at . . . and we would work intensely with her on that. We met with her, we told her we'd like to help her enroll in another program. She would participate in the plan and outline the steps to take and then a week later it was like we never talked about it. She was calling asking questions that we had already talked about.'"

7 However, there is no indication that F.S. was born with drugs in her body, or that mother tested positive for drugs on or near the time she gave birth.

Mother had never cared for F.S. outside of the residential treatment program, where she received basic training such as how to hold the baby and how to change a diaper. When not in a residential program, mother's only support was Mr. H. However, mother was living with Mr. H. as her support when her first child was taken away because mother was unable to feed him and he quickly failed to thrive. Mr. H. was apparently unable to sufficiently assist mother then. Further, the short history of mother's visits with F.S. once she was detained cast doubt on mother's ability to adequately provide regular care for her. Mother was nearly an hour late to the first visit, which was scheduled to last three hours. Upon arriving, mother stated she had to leave an hour early, then repeatedly attempted to leave before staying even one hour. She remained only at the encouragement of the visit monitor. On the day of the second visit, mother called 15 minutes after the scheduled start time for the visit to ask what time the visit was supposed to take place. Mother stated she would arrive in 45 minutes or later, thus missing at least the first hour of the visit.

That F.S. had not yet been harmed did not prevent the juvenile court from asserting jurisdiction over her. "Juvenile dependency law in general does not require a child to be actually harmed before [DCFS] and the courts may intervene." (*In re Leticia S.* (2001) 92 Cal.App.4th 378, 383, fn. 3.) " 'The purpose of dependency proceedings is to prevent risk, not ignore it.' [Citation.]" (*Jonathan L. v. Superior Court* (2008) 165 Cal.App.4th 1074, 1104.) This is particularly true in a case such as this one where mother's substance abuse, mental issues, and possible learning disability had caused her to neglect two other infants leading to their removal, and at least some of the problems that caused the neglect had not been addressed or resolved.

We therefore conclude there was sufficient evidence to support the juvenile court's jurisdictional findings under section 300, subdivision (b).

B. Dispositional Order

The juvenile court removed F.S. from mother's custody based on its finding that return would create a substantial risk of danger to F.S.'s physical or emotional well-being, and there were no reasonable means to protect her without removal. Mother

argues there was insufficient evidence to support this finding. (§ 361, subd. (c)(1).) We disagree.

"[W]e review the record in the light most favorable to the dependency court's order to determine whether it contains sufficient evidence from which a reasonable trier of fact could make the necessary findings by clear and convincing evidence. [Citation.]" (*In re Mariah T.* (2008) 159 Cal.App.4th 428, 441.) "The jurisdictional findings are prima facie evidence that the child cannot safely remain in the home. (§ 361, subd. (c)(1).) The parent need not be dangerous and the child need not have been actually harmed for removal to be appropriate. The focus of the statute is on averting harm to the child. [Citations.] In this regard, the court may consider the parent's past conduct as well as present circumstances. [Citation.]" (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917.)

The evidence supported the juvenile court's finding that F.S. was at substantial risk of danger to her physical or emotional well-being if left in mother's custody. As explained above, mother had a long history of abusing illegal substances, including a 10-year history of cocaine use. Mother had previously been in drug treatment programs, but was unable to remain drug free. Although mother had been clean since June 2008 while living at a residential treatment facility, she left without completing the program. When social workers not affiliated with DCFS met with mother to discuss their concerns about her ability to care for F.S. on her own, mother became enraged and threatened to leave the country, or to simply give up F.S. because of the stress of the situation.

Moreover, mother had been unable to manage her addiction, psychiatric issues, learning disability, and caring for an infant on two previous occasions, resulting in the removal of her two prior children. The record contains little information about the second child, but in the case of the first child, he failed to thrive and had to be removed from mother's care after rapidly losing weight. While mother was working with success on her addiction problem, her psychiatric or developmental issues were just beginning to be addressed and remained unresolved. These problems had affected mother's ability to function and care for F.S., as demonstrated in part by her noticeable memory problems.

Further, her stated inclination in response to a stressful situation involving F.S. was to run away or abandon F.S.

Although at the dispositional hearing mother informed the court that she had just entered a new residential program, there remained substantial evidence to support the juvenile court's dispositional findings.

DISPOSITION

The juvenile court judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BIGELOW, J.

We concur:

RUBIN, Acting P. J.

MOHR, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.